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BERNARD G. RIGGS, Appellant)	
)	
and)	Docket No. 04-543
)	Issued: June 18, 2004
DEPARTMENT OF THE NAVY,)	
NAVAL FACILITIES ENGINEERING)	
COMMAND, San Diego, CA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

On December 22, 2003 appellant filed a timely appeal of the September 5, 2003 merit decision of the Office of Workers' Compensation Programs, which denied his claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

On February 10, 2003 appellant, then a 59-year-old tool room mechanic, filed an occupational disease claim alleging that he developed an emotional condition due to job-related stress. He stopped working on January 21, 2003 and did not return.

In a statement dated February 8, 2003, appellant alleged that in 1997 he was told by his supervisors, Don Wilson and Don Etheridge, that he would be required to do two jobs or face being sent home or reduced in force. On February 12, 1998 Mr. Wilson ordered him to lift 47 welding cylinders weighing 100 pounds each, even though appellant had a back condition and he reinjured his back and elevated his blood pressure. He alleged that Maria Jennings, his supervisor, after July 1, 2002, did not allow him to take his "use or lose" pay for a family vacation as planned. In August 2002 and January 2003, appellant was required to perform inventories of the tool room under tight deadlines with unrealistic performance standards of 100 percent accuracy. He alleged that, while performing the inventories, he received conflicting instructions from management personnel, Ms. Jennings and Bill Rouse, as to how to conduct the inventory.

A February 10, 2003 attending physician's report from Dr. Pierre de Reeder, a general practitioner, diagnosed reactive anxiety, depression and hypertension and indicated with a check mark "yes" that appellant's condition was caused or aggravated by his work conditions. He extended appellant's disability until February 28, 2003.

By letter dated April 24, 2003, the Office asked appellant to submit additional information.

In a letter dated May 22, 2003, appellant reiterated his allegations as set forth in his letter of February 8, 2003. He also submitted a May 21, 2003 report from Dr. de Reeder, who treated him since January 22, 2003 for job-related stress, which involved inventories and management of a tool room. Dr. de Reeder diagnosed work-related reactive anxiety, depression and exacerbation of hypertension and recommended complete removal from the workplace for an indefinite period of time.

In an undated statement, Ms. Jennings, appellant's first line supervisor, stated that she informed him that, commencing July 1, 2002, she was the first line tool room supervisor and that he would report to her daily and follow her instructions. She had to remind appellant on numerous occasions that he was to follow her directions and ignore direction from individuals outside of the chain of command. Nevertheless, he continued to seek instruction from Mr. Rouse, a second line supervisor. Ms. Jennings advised that appellant's performance standards from July 2002 until 2003 had not changed. She indicated that Mr. Rouse informed appellant of the requirement to perform the inventory with a goal of 100 percent accuracy. Ms. Jennings indicated that there were inaccuracies with the inventories performed in the tool rooms and there would likely be another tool inventory in the future, as inventory was an ongoing requirement. She denied that appellant was ever forced to perform two jobs from October 25, 1998 to July 1, 2002 in the tool room or the shop stores; however, Ms. Jennings had no personal knowledge of whether appellant worked two assignments in 1997. She noted that he was never transferred or loaned to another tool room and his responsibilities and duties were the same as that of every tool room mechanic. Ms. Jennings advised that the tool rooms conducted inventory in 2003, with deadlines and achievable goals and the staff was offered reasonable time and ample manpower and resources to meet these goals. She further noted that appellant was part of a team of five upper grade journeymen who were to conduct the inventories and his role was to conduct the day-to-day business of the tool room and provide guidance as necessary to the

inventory team. Appellant was informed that he would be provided with additional staff if required. Ms. Jennings noted that appellant volunteered to take a more aggressive role than requested by her in the inventory process in July 2002 and January 2003. She was not aware of any work restrictions for him for an industrial back injury that occurred in the late 1990's. Ms. Jennings was not aware of appellant's work assignments prior to 2002 and Mr. Rouse did not have knowledge of his assignments prior to October 1998. The employing establishment submitted a note from Harold Jamerson, human resources specialist, who advised that appellant's prior supervisors, Mr. White and Mr. Etheridge, had retired.

In a decision dated July 23, 2003, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed emotional condition occurred in the performance of duty.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.³

ANALYSIS

Appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees'

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Compensation Act.⁴ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁵

Appellant alleged that in 1997 he was told by his supervisors, Mr. Wilson and Mr. Etheridge, that he would be required to do two jobs. The assignment of work is an administrative function. In the instant case, there is no proof that appellant was assigned more than one job at any given time. Additionally, complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion fall, as a rule, outside the scope of coverage provided by the Act.⁶ This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.⁷ Appellant has not submitted evidence of error or abuse on the part of the employing establishment in discharging its managerial duties.

Appellant alleged being forced to work beyond his physical capabilities, noting that, on February 12, 1998, Mr. Wilson ordered him to lift 47 welding cylinders weighing 100 pounds each and as a result he reportedly injured his back and elevated his blood pressure. The assignment of duties beyond an employee's work tolerance limitations can be a compensable factor of employment.⁸ However, the record is void of any medical evidence indicating that appellant was restricted from any type of work due to a back condition. Therefore, the Board finds that there is insufficient evidence to establish that appellant was required to perform work that exceeded his physical capabilities.

Appellant also claimed an emotional reaction to Ms. Jennings' alleged refusal to allow him to take his "use or lose" leave for a family vacation. Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁹

Appellant's allegations that, in August 2002 and January 2003, he was required to perform inventories of the tool room under tight deadlines is a compensable factor. An emotional reaction to a situation in which an employee is trying to meet his position requirements is compensable.¹⁰ Additionally, employment factors such as a heavy workload and the imposition of deadlines are covered under the Act.¹¹ Appellant alleged that the inventories

⁴ *Id.*

⁵ *Id.*

⁶ *Marguerite J. Toland*, 52 ECAB 294, 299 (2001).

⁷ *Id.*

⁸ *See Kim Nguyen*, 53 ECAB ____ (Docket No. 01-505, issued October 1, 2001).

⁹ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

¹⁰ *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹¹ *Id.*

took approximately 10 days and he had 4 or 5 inexperienced workers to assist in the inventories. He stated that there was no real format used or uniformly applied by the supervisors. Appellant indicated that Mr. Rouse advised him that the inventory had to be completed with 100 percent accuracy.¹²

Statements from Ms. Jennings confirm that the tool rooms conducted inventory in 2003, which were subject to deadlines. However, she noted that they were achievable goals and the staff was offered reasonable time and ample manpower and resources to meet these goals. Ms. Jennings also noted that appellant was part of a team of five upper grade journeymen who were to conduct the inventories and appellant's role was to conduct the day-to-day business of the tool room and provide guidance as necessary to the inventory team. He was also informed that should he need additional staff it would be provided to him. Ms. Jennings confirmed appellant's allegation that Mr. Rouse informed appellant of the requirement to perform the inventory with a goal of 100 percent accuracy. The Board finds that the record does provide corroborating evidence to support appellant's allegation that he was required to perform inventory work as part of his assigned duties. He has established a compensable employment factor under the Act. However, appellant's burden of proof is not discharged by the fact that he has established a compensable employment factor.¹³

To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor. He submitted medical records from Dr. de Reeder, a general practitioner, who diagnosed reactive anxiety, depression, hypertension and indicated with a check mark "yes" that appellant's condition was caused or aggravated by his work conditions. However, he did not mention the inventory deadlines. A subsequent report from Dr. de Reeder, noted treating appellant since January 22, 2003 for job-related stress, which involved inventories and management of a tool room. He diagnosed work-related reactive anxiety, depression and exacerbation of hypertension and recommended complete removal from his workplace for an indefinite period of time. The Board finds that the opinion of Dr. de Reeder is of limited probative value in establishing whether his psychiatric condition is causally related to his federal employment. Although Dr. de Reeder generally supported causal relationship, his opinion regarding appellant's emotional condition is of reduced probative value as he is not a specialist in the appropriate field and because he failed to provide sufficient medical rationale to support his stated conclusion on causal relationship.¹⁴

¹² While Mr. Rouse advised appellant that 100 percent accuracy was expected during the inventories, appellant has not established that he received conflicting instructions. Ms. Jennings indicated that commencing July 1, 2002 she was the first line tool room supervisor and advised appellant to ignore any direction from individuals outside of the chain of command.

¹³ *Frank A. McDowell*, 44 ECAB 522, 526 (1993).

¹⁴ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the opinions of physicians also have training and knowledge in a specialized field of medicine have greater probative value concerning questions peculiar to that field than other physicians).

CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2003 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: June 18, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member